Supreme Court, U.S.
FILED
MAY 21 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-1871

IN THE

SUPREME COURT OF THE UNITED STATES

October, 1985, Term

RICKEY E. MITCHELL,

Petitioner-Appellant

V.

W. J. MICHAEL CODY, ATTORNEY GENERAL OF THE STATE OF TENNESSEE, ET AL,

Respondents-Appellees.

ORDER DENYING AND DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

(SUPPLEMENTAL APPENDIX)

Charles G. Black,
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(901) 525-4618

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

RICKEY E. MITCHELL,	*	FILED JUNE 12, 1985
	*	
Petitioner,	*	
	*	
V.	*	CASE NO. 85-2086 H
	*	
W. J. MICHAEL CODY, ET AL,	*	
	*	
Respondents	*	

ORDER DENYING AND DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS

The application of the petitioner, Rickey E. Mitchell, for a writ of habeas corpus is denied for the reasons stated in the opinion of the Supreme Court of Tennessee, State v. Mitchell, 682 S.W.2d 918 (Tenn. 1984). This Court is of the

opinion Diaz v. United States, 223 U.S. 442, 32 S. Ct. 250 (1912), Jeffers v. United States, 97 S.Ct. 2207, 2216 (1977), controls in this case. Moreover, the Court notes that if it is constitutionally permissible for the State of Ohio to accept guilty pleas to lesser included offenses stated in a multi-count indictment and continue to try a defendant on the remaining more serious offenses, then certainly the State of Tennessee is within constitutional limits by trying petitioner in the state court on the more serious offense of vehicular homicide which the state had not yet accused Mitchell when he pled guilty to driving while under the influence of an intoxicant, disregarding a stop sign and unlawful possession of a

controlled substance in the Municipal Court of the city of Memphis, Tennessee. Ohio v. Johnson, 104 S. Ct. 2536 (1984).

Accordingly, the petition for a writ of habeas corpus is denied. The motion for a stay of the state trial pending appeal is denied. The petition is hereby DISMISSED.

ENTERED this 12th day of June, 1985.

/S/ ODELL HORTON
ODELL HORTON, JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

I, Charles G. Black, do hereby certify that I have served a copy of the foregoing Supplemental Appendix on the Honorable W. J. Michael Cody, Attorney General of the State of Tennessee, 450 James Robertson Parkway, Nashville, Tennessee 37219; and to the Honorable Hugh W. Stanton, Jr., District Attorney General for the Thirtieth Judicial Circuit of Memphis, 201 Poplar Avenue, #301, Memphis, Tennessee 38103, via United States mail, postage prepaid, on this the 20th day of May, 1986.

CHARLES G. BLACK